

mined at the time the agreement is entered into). If the period actually served is less than two years, the amount to be refunded is the entire amount paid to the individual.

(2) An individual shall not be required to make a refund under paragraph (1) of this subsection if the Secretary determines, in accordance with regulations prescribed under subsection (h) of this section, that the individual's failure to perform services for the period of obligated service is due to circumstances (not including separation for cause) beyond the control of the individual.

(3) An obligation to refund any portion of a bonus payment under this subsection is, for all purposes, a debt owed to the United States.

(4) The provisions of this subsection and the specific amounts that the individual could be required to refund shall be disclosed to the individual at the time the agreement is entered into and shall be clearly set forth in the contract.

(h) The Secretary shall prescribe regulations to carry out this section.

(Added Pub. L. 100-322, title II, §212(a)[(1)], May 20, 1988, 102 Stat. 514, §4120; renumbered §7458 and amended Pub. L. 102-40, title IV, §401(c)(4), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 103-446, title XII, §1201(h)(4), Nov. 2, 1994, 108 Stat. 4688; Pub. L. 110-387, title IX, §901(a)(6), Oct. 10, 2008, 122 Stat. 4142.)

#### AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110-387 substituted “pro-rated” for “pro rated”.

1994—Pub. L. 103-446 substituted “Recruitment and retention bonus pay” for “Recruitment and retention bonus pay for nurses and certain other health-care personnel” as section catchline.

1992—Subsec. (e). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

1991—Pub. L. 102-40 renumbered section 4120 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration” wherever appearing.

Subsecs. (b)(1), (c)(2), (e). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (f). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places and “Secretary’s” for “Administrator’s”.

Pub. L. 102-40 substituted “subchapter III” for “section 4118 of this title”.

Subsecs. (g)(1), (2), (h). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

#### § 7459. Nursing staff: special rules for overtime duty

(a) LIMITATION.—Except as provided in subsection (c), the Secretary may not require nursing staff to work more than 40 hours (or 24 hours if such staff is covered under section 7456 of this title) in an administrative work week or more than eight consecutive hours (or 12 hours if such staff is covered under section 7456 or 7456A of this title).

(b) VOLUNTARY OVERTIME.—(1) Nursing staff may on a voluntary basis elect to work hours otherwise prohibited by subsection (a).

(2) The refusal of nursing staff to work hours prohibited by subsection (a) shall not be grounds—

(A) to discriminate (within the meaning of section 704(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-3(a))) against the staff;

(B) to dismiss or discharge the staff; or

(C) for any other adverse personnel action against the staff.

(c) OVERTIME UNDER EMERGENCY CIRCUMSTANCES.—(1) Subject to paragraph (2), the Secretary may require nursing staff to work hours otherwise prohibited by subsection (a) if—

(A) the work is a consequence of an emergency that could not have been reasonably anticipated;

(B) the emergency is non-recurring and is not caused by or aggravated by the inattention of the Secretary or lack of reasonable contingency planning by the Secretary;

(C) the Secretary has exhausted all good faith, reasonable attempts to obtain voluntary workers;

(D) the nurse staff have critical skills and expertise that are required for the work; and

(E) the work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

(2) Nursing staff may not be required to work hours under this subsection after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.

(d) NURSING STAFF DEFINED.—In this section, the term “nursing staff” includes the following:

(1) A registered nurse.

(2) A licensed practical or vocational nurse.

(3) A nurse assistant appointed under this chapter or title 5.

(4) Any other nurse position designated by the Secretary for purposes of this section.

(Added Pub. L. 111-163, title VI, §602(a)(1), May 5, 2010, 124 Stat. 1172.)

#### SUBCHAPTER V—DISCIPLINARY AND GRIEVANCE PROCEDURES

#### § 7461. Adverse actions: section 7401(1) employees

(a) Whenever the Under Secretary for Health (or an official designated by the Under Secretary for Health) brings charges based on conduct or performance against a section 7401(1) employee and as a result of those charges an adverse personnel action is taken against the employee, the employee shall have the right to appeal the action.

(b)(1) If the case involves or includes a question of professional conduct or competence in which a major adverse action was taken, such an appeal shall be made to a Disciplinary Appeals Board under section 7462 of this title.

(2) In any other case, such an appeal shall be made—

(A) through Department grievance procedures under section 7463 of this title, in any case that involves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any